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No. 03-808

In The
Supreme Court of the United States

DAVID L. GARRISON,

Petitioner,

v.

CASSENS TRANSPORT COMPANY,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Sixth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

Where a union member alleges that his union breached its duty to fairly represent him in the grievance process by choosing an unsuccessful strategy for presenting his case, settled precedents of this Court, applied without conflict by the Courts of Appeal, hold that a breach of the duty of fair representation is established only where the union's conduct was arbitrary ("so far outside a wide range of reasonableness as to be irrational"), in bad faith (resulting from "fraud, deceitful action or dishonest conduct"), or discriminatory. *Air Line Pilots Ass'n Int'l v. O'Neill*, 499 U.S. 65 (1991); *Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971).

The questions presented are:

1. Should the Court abandon this standard in favor of a proposed three-factor, 13-subfactor test which no reported court decision has ever adopted or discussed?

2. Should the Court re-weigh the Court of Appeals' application of the settled law to the record below, which held that the union's representation was neither arbitrary, discriminatory nor in bad faith?

PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The parties to the proceeding are set forth in the case caption. Respondent Cassens Transport Company is a wholly-owned subsidiary of Cassens Corp., an Illinois corporation. No publicly held corporation owns ten percent or more of that corporation's stock.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
PARTIES TO THE PROCEEDING AND CORPORATE DISCLOSURE STATEMENT	ii
TABLE OF AUTHORITIES	iv
OPINIONS AND ORDER BELOW	1
STATEMENT OF THE CASE	1
REASONS FOR DENYING THE PETITION	8
I. No Meritorious Dispute as to Federal Law	9
II. Court of Appeals Decision Properly Applies Applicable Law	12
CONCLUSION	18

TABLE OF AUTHORITIES

Page

CASES

Air Line Pilots Ass'n Int'l v. O'Neill, 499 U.S. 65 (1991) ..... *passim*

Anderson v. Liberty Lobby, Inc., 477 U.S. 242 (1986) 13

Baxter v. United Paperworkers Int'l Union, 140 F.3d 745 (CA 8 1998) 16

Black v. Ryder/PIE Nationwide, 15 F.3d 573 (CA 6 1994) 10

Dushaw v. Roadway Express, 66 F.3d 129 (CA 6 1995), *cert. den.*, 517 U.S. 1120 (1996) 10

Hines v. Anchor Motor Freight, 424 U.S. 554 (1976) 9, 11

Marquez v. Screen Actors Guild, Inc., 525 U.S. 33 (1998) 10

Mock v. T.G. and Y. Stores Co., 971 F.2d 522 (CA 10 1992) 11, 16

Motor Coach Employees v. Lockridge, 403 U.S. 274 (1971) 10, 11, 16

Spellacy v. Air Line Pilots Ass'n Int'l, 156 F.3d 120 (CA 2 1998), *cert. den.*, 526 U.S. 1017 (1999) 16

Steelworkers v. American Manufacturing Co., 363 U.S. 564 (1960) 9

United Paperworkers International Union v. Misco, Inc., 484 U.S. 29 (1987) 10

United Steel Workers of Am. v. Rawson, 495 U.S. 362 (1990) 7

Vaca v. Sipes, 386 U.S. 171 (1967) 7, 8, 9, 10, 13

Walk v. PIE Nationwide, 958 F.2d 1323 (CA 6 1992) 10, 11

TABLE OF AUTHORITIES – Continued

Page

STATUTES

29 U.S.C. § 185(a) 1

SUPREME COURT RULES

Rule 10 9

Rule 10(a) 11

Rule 14(i) 16

OPINIONS AND ORDER BELOW

The decision of the Court of Appeals dated July 7, 2003, is reported at 334 F.3d 528 (CA 6 2003). (5a-30a) The order of the Court of Appeals denying rehearing is unreported but is referenced at 334 F.3d 528, *supra*. (1a-4a) The amended judgment of the District Court dated August 2, 2001, which is the subject of the decision of the Court of Appeals is unreported. (31a-33a)

STATEMENT OF THE CASE

The instant case is a "hybrid" action for breach of fair representation and breach of contract under Section 301 of the Labor Management Relations Act, 29 U.S.C. § 185(a). The underlying claim concerns a labor arbitration decision rendered November 5, 1996, adverse to the Petitioner David Garrison ("Garrison") and in favor of Respondent Cassens Transport Company ("Cassens"). (14a-15a)

Cassens is a trucking company engaged in the delivery of new automobiles and light duty trucks from assembly plants and railheads to dealerships located primarily in the Midwest. Cassens has operated in Smyrna, Tennessee since June, 1983 serving the Nissan Assembly Plant located near the company's terminal. (6a)[1] Teamsters Local

[1] For the purposes of this Brief, Cassens adopts the facts as set forth by the Court of Appeals. (6a-16a) The Court of Appeals reversed the District Court and held that Cassens was entitled to judgment as a matter of law under Fed. R. Civ. P. 50(b) (17a-18a) The Court of Appeals in such circumstances viewed the evidence in the light most favorable to Garrison and gave him the benefit of all reasonable inferences. (18a) As Garrison does not contend in his petition that the Court of Appeals'

(Continued on following page)

327 is the exclusive bargaining representative of the company's Smyrna drivers. Cassens and Local 327 are signatory to a multi-employer collective bargaining agreement referred to as the National Master Automobile Transporters Agreement ("NMATA"). (7a)

In 1980, Garrison became employed with another automobile hauler, Allied Systems, Ltd. ("Allied"). In 1986, he transferred to Allied's Smyrna, Tennessee terminal where he was employed until November 21, 1990, when he sustained an on-the-job injury. (6a) While employed by Allied as a driver at the Symrna terminal, Garrison also was a member of Local 327 and was covered by NMATA. (7a) He remained on Allied's seniority list after his injury even though he was not working.

In September, 1994, Nissan awarded Cassens a portion of its Smyrna transport work which previously had been performed by Allied. Allied, Cassens, and Local 327 submitted a request to the National Joint Arbitration Committee (the "NJAC") for a determination of the seniority rights of Allied employees affected by the work transfer. The NJAC issued its decision, ruling that pursuant to NMATA, Allied drivers had the right to transfer to Cassens to follow the Nissan work. Regarding seniority rights, the NJAC stated that Allied's seniority list was to be

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evidentiary summary fails to construe the evidence in the manner most favorable to his position, Cassens will rely upon that summary in responding to the petition. In many instances, however, the evidentiary record is significantly more favorable to Cassens than the Court of Appeals' summary may suggest.

dovetailed[2] by terminal seniority with the Cassens and Smyrna Seniority List. (8a)

As required by the NJAC's decision, Allied was responsible for preparing separate lists of Allied drivers seeking to transfer to Cassens. Allied notified all Allied employees assigned to the Smyrna terminal, including Garrison, that they could designate whether they wished to follow the work to Cassens or stay with Allied and seek work at another terminal. (7a) Even though he had not worked at Smyrna for nearly four years, Garrison advised Allied that he wanted to follow the work to Cassens and sent confirming letters to the business agent for Local 327. Garrison's letters were both signed "Received" by Cassens' Smyrna terminal manager.[3] Garrison received notice from Allied that based upon his decision to transfer to Cassens, his name was being removed from Allied's seniority list.

On June 7, 1996, approximately nineteen months after Garrison submitted his transfer election forms, he obtained a medical release from his doctor permitting him to return to work. When he contacted Cassens inquiring into when he could begin work, Cassens informed him that his name did not appear on Cassens' Smyrna seniority roster. (9a) Garrison then discussed his situation with

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[2] Under NMATA, Art. 5, § 1 "'Dovetail seniority' is a term that is applied when two or more seniority lists are merged or combined with a single seniority list which recognizes the terminal seniority date of each employee. The list is arranged by terminal seniority date with the most senior employee at the top.

[3] Cassens initially denied receiving these letters but later qualified its position. (10a) The arbitrators ultimately ruled in Garrison's favor on this issue. (14a)

Jimmy Neal, Local 327's business agent. Neal indicated that he agreed with Garrison's case for being placed on Cassens' seniority roster. (10a) Garrison submitted a grievance to that effect through Neal and Local 327. (10a)

The parties' inability to reach an acceptable resolution to Garrison's grievance resulted in the matter being submitted for arbitration. Neal docketed the grievance with the Southern Area Automobile Transporters Grievance Committee to be addressed at its August 1996 meeting in New Orleans, Louisiana. Garrison did not attend this proceeding, although Neal was present on his behalf. During the proceeding, Cassens reasserted its position that it did not have a contractual obligation to Garrison. In addition, for the first time, Cassens took the position that Garrison's seniority transfer opportunity had expired because he had not reported to work at Cassens within 30 days of the transfer opportunity as required by a "30-day rule" established in prior grievance cases. Garrison had not been advised of such a rule at the time of the reassignment of the Smyrna work to Cassens. (9a) Garrison contends that Neal did not inform him that Cassens had raised the defense of the 30-day rule at the Southern Area proceeding. (11a)

Garrison's case was referred to the National Joint Standing Seniority Committee (the "NJSSC") in Dana Point, California and scheduled to be heard on November 5, 1996. In preparing for this proceeding, Garrison and Neal kept in constant contact. They had several meetings and spoke on the phone almost every day. During this preparation stage, Garrison focused exclusively on trying to prove that he properly notified Cassens of his intentions to follow the Nissan work. Ultimately, Garrison forwarded

to Neal a ten-page, ninety-seven paragraph typed presentation with twenty-eight exhibits for the upcoming arbitration. Neal reviewed the presentation and thought that it was one of the best he had ever seen. (12a)

Approximately 48 hours before the proceeding, Neal, Garrison, and a Cassens representative met to exchange documents and information. Cassens gave Neal and Garrison seven prior joint arbitration committee decisions that it intended to use in support of Cassens' 30-day rule defense. Garrison contends that this was the first time that he was made aware of the existence of a 30-day rule. Garrison and Neal reviewed these decisions and decided that they were not applicable or were distinguishable from the circumstances involved in the instant matter. Neal failed, however, to realize or explain the potential significance the 30-day rule could have on Garrison's grievance. Consequently, no rebuttal – either by Neal or Garrison – was prepared on the issue of the 30-day rule. (12a)

In presenting Garrison's grievance to the NJSSC, Neal introduced Garrison to the committee and read Garrison's grievance into the record. Garrison, however, at his own insistence assumed primary responsibility for presenting his grievance to the committee. (26a) Garrison read a prepared statement and introduced exhibits in support of his case. Neither Neal nor Garrison made any mention or otherwise tried to obviate any argument regarding the 30-day rule. Cassens' representative handed committee members copies of arbitral precedent that he believed supported Cassens' position that "a man has 30 days from the date of the transfer [in] which he must make himself available." In rebuttal, Neal did not address the 30-day rule but Garrison raised a specific challenge to its applicability. (13a, 26a) In its final response, Cassens

more forcefully fleshed out its position on the applicability of the 30-day rule. (14a)

Following this hearing, the NJSSC issued its decision denying Garrison's request for employment with Cassens. The NJSSC found that "[p]rior decisions of this Committee require that employees who follow their work . . . make themselves available for work within 30 days after expressing their desire to do so." Because Garrison had not made himself available to work for Cassens during the applicable 30-day period, the NJSSC found that his transfer rights were extinguished. (14a)

Garrison then initiated the action giving rise to this case. In the course of the litigation, Garrison became aware of a decision of the NJAC that presented a similar issue to that involved in Garrison's case that had not been brought to the committee's attention. In that decision in May 1992, Cassens had asked the NJAC for guidance as to how long Cassens was obligated to offer work in a new operation at Avon Lake, Ohio to a driver from another company, E & L, then on a leave of absence due to an on-the-job injury. (43a-49a)[4] The NJAC did not mention a 30-day rule and determined that the E & L employee was to be deemed as transferred and hold seniority at Avon Lake. (15a)

All defendants except Cassens were dismissed from the lawsuit by motion or settlement. The case then

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[4] Garrison's presentation of the Avon Lake decision in the Appendix intersperses his own emphases and comments into the text of the decision. The original decision contained no boldface and no footnotes, both of which have been added by Garrison contrary to Rule 14(i).

proceeded to trial. At the conclusion of Garrison's case in chief and again at the close of trial, Cassens moved for judgment as a matter of law pursuant to Fed. R. Civ. P. 50(b). The court denied the motion and submitted the case to the jury. The jury found in favor of Garrison and awarded $408,885 in compensatory damages, allocating seventy-five percent of liability to Cassens and twenty-five percent to Local 327. It also awarded $500,000 in punitive damages against Cassens. Thereafter, Cassens renewed its Rule 50(b) motion, which was again denied by the court. (82a-87a) Cassens then moved for a new trial under Fed. R. Civ. P. 59, which also was denied.

The Court of Appeals reversed the district court's ruling denying Cassens' Rule 50(b) motion and held that the evidence presented to the jury was insufficient to support a finding of liability. (18a) The Court noted that a union member seeking relief from a grievance arbitration decision must show both the breach of a collective bargaining agreement by the employer and the breach of the duty of fair representation by the union. (18a) If the union member does not demonstrate both violations, his claim cannot succeed. (19a) The Court held that the applicable standard was established by *Air Line Pilots Ass'n Int'l v. O'Neill*, 499 U.S. 65 (1991). That standard held that an employee must demonstrate that the union's actions or omissions during the grievance process were arbitrary, discriminatory, or in bad faith and that union's actions were so far outside a wide range of reasonableness as to be irrational. (19a) [citing *O'Neill*, *supra*, at 499 U.S. 67; *Vaca v. Sipes*, 386 U.S. 171, 190 (1967); and *United Steel Workers of Am. v. Rawson*, 495 U.S. 362, 372-73, 376 (1990).]

Applying this standard to the actions of Garrison's union representative, the Court of Appeals held that the

claimed defects in representation by Neal amounted at most to negligence. The Court characterized Neal's actions as miscalculations of strategy and errors in judgment. (24a) It stated that his handling of the case did not rise to the level of irrationality or extreme arbitrariness necessary to establish a breach of the duty of fair representation under the *O'Neill* principles. (22a) The Court of Appeals thus found that the evidence viewed most favorably to Garrison was insufficient to support a finding of liability based on a breach of the duty of fair representation. (27a)

REASONS FOR DENYING THE PETITION

Nothing about this case warrants the Court's attention. The case arises in a settled area of the law, there are no conflicts between the Circuits concerning the manner in which the law is being applied, and there is nothing to distinguish Petitioner's situation from the broad range of employee grievances which are routinely presented and decided by non-lawyers in the context of collective bargaining agreements. Petitioner's only request for a change in the established jurisprudence concerning review of grievance arbitration determinations is to propose that the Court abandon the one sentence *Vaca v. Sipes* rule it has followed for the past 35 years and substitute a three-factor, 13-subfactor test focusing on the particular procedures of the automotive hauler collective bargaining agreement. Petitioner cites no court decisions as ever having adopted or even considered this test, and it would appear that the petition itself is the first instance in which this test ever has been articulated.

The petition otherwise requests nothing more than an evaluation by this Court of the manner in which the Court of Appeals applied the settled precedents of grievance arbitration law to the particular circumstances of the Petitioner's grievance. At best, such an argument is nothing more than a claim of misapplication of a properly stated rule of law which is not appropriate for a grant of certiorari. (See Rule 10) As noted above, there is no conflict between the circuits as to the appropriate manner in which this Court's determinations concerning the duty of fair representation are being applied.

I. No Meritorious Dispute as to Federal Law.

Petitioner has presented no basis for any further discussion by this Court of its definition of the duty of fair representation promulgated more than 35 years ago in *Vaca v. Sipes*, *supra*, 386 U.S. 171. As explained in *Vaca* and its progeny, union members who claim that their unions failed to provide fair representation in the grievance process are entitled to pursue a judicial remedy only if they establish that the union's conduct was "arbitrary, discriminatory, or in bad faith". *Vaca v. Sipes*, *supra*, at 386 U.S. 190. This Court has noted that a clear congressional policy favors resolution of labor disputes by arbitration. *Hines v. Anchor Motor Freight*, 424 U.S. 554, 562 (1976). This congressional policy can be effectuated only if the means chosen by the parties for settlement of their differences under a collective bargaining agreement are given full play. *Steelworkers v. American Manufacturing Co.*, 363 U.S. 564, 566 (1960). Courts are not to usurp those functions which collective bargaining contracts have properly entrusted to an arbitration tribunal. *Id.* at 569. Given the great deference to arbitration for the resolution

of industrial disputes, courts generally will not disturb the finality of arbitration awards. *United Paperworkers International Union v. Misco, Inc.*, 484 U.S. 29 (1987).

This Court and the Courts of Appeal have provided numerous explanations as to appropriate standards for applying the tests set forth in *Vaca v. Sipes*. With respect to the issue of whether a union's conduct toward a member of the bargaining unit was arbitrary, this Court held in *Air Line Pilots Ass'n Int'l v. O'Neill*, *supra*, 499 U.S. at 67, that

> * * * a union's actions are arbitrary only if, in light of the factual and legal landscape at the time of the union's actions, the union's behavior is so far outside a "wide range of reasonableness" * * * as to be irrational. *Id.* at 67.

With respect to the issue of whether a union's actions were in bad faith, this Court held in *Motor Coach Employees v. Lockridge*, 403 U.S. 274 (1971), that bad faith exists only when the union's behavior consists of "fraud, deceitful action or dishonest conduct". *Id.* at 299. Since the *O'Neill* decision in 1991, this Court has revisited its standard concerning arbitrariness only once[5] and has not felt compelled to make any mention whatsoever of its standard regarding bad faith. The Courts of Appeal, however, apply these doctrines repeatedly and with little conflict. See, e.g. *Black v. Ryder/PIE Nationwide*, 15 F.3d 573, 585 (CA 6 1994); *Dushaw v. Roadway Express*, 66 F.3d 129, 133 (CA 6 1995), *cert. den.*, 517 U.S. 1120 (1996); *Walk v. PIE*

[5] *Marquez v. Screen Actors Guild, Inc.*, 525 U.S. 33, 44 (1998) (applying standard).

Nationwide, 958 F.2d 1323 (CA 6 1992); *Mock v. T.G. and Y. Stores Co.*, 971 F.2d 522, 531 (CA 10 1992).

Petitioner does not allege that there is any conflict in the decisions of the Courts of Appeal applying the *O'Neill* and *Lockridge* criteria which necessitates a grant of certiorari by this Court. Compare, Rule 10(a) Petitioner rather suggests in effect that the circumstances of his own case in and of themselves require the Court to abandon the *O'Neill* and *Lockridge* tests and substitute a three-factor 13-subfactor test which Petitioner labels the "Foot-stool of Integrity" (Petition at 13, 89a-92a[6]).

Petitioner cites no judicial authority for any of the elements contained in his proposed test. Rather than following this Court's statement in *O'Neill* that courts should not "sit as a super legislature"[7] to prescribe the details of a union's representation duties, Petitioner lists thirteen specific steps which he alleges a union is required to take in order to fairly represent the interests of a union member. These proposed requirements include providing the union member with a written identification of every article and section of the collective bargaining agreement that are relevant to the charges brought against the member (90a), providing a copy of the collective bargaining

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[6] While Petitioner suggests that his test is supported by *Hines v. Anchor Motor Freight, Inc.*, *supra*, 424 U.S. 554, *Hines* holds clearly that the "minimum levels of integrity" referred to by Petitioner are met when a union's conduct is found not to fall within the prohibited categories of arbitrary, discriminatory, or bad faith action established in *Vaca v. Sipes*, *supra* at 386 U.S. 190. *Hines v. Anchor Motor Freight*, *supra* at 424 U.S. 571.

[7] *Air Line Pilots Ass'n Int'l v. O'Neill*, *supra* at 499 U.S. 78.

agreement with a computer search engine (91a), providing a complete listing of all prior arbitration committee decisions with a search engine (91a) and requiring that the union insist that all procedures governing grievances in a contract be followed in every grievance proceeding. (91a)

The test proposed by Petitioner assumes that all collective bargaining arbitration procedures rely on committee decision precedents, that all grievance procedures require advanced notice of company charges, and that all grievance mechanisms used fixed rules of procedure. Petitioner advances no reason why this Court should consider abandoning 35 years of settled fair representation precedents to consider a proposal for micro-managing a union's representation of its members which is articulated in the Petition for the first time anywhere.[8]

II. Court of Appeals Decision Properly Applies Applicable Law.

The Court of Appeals decision is in accordance with this Court's holdings regarding the duty of fair representation. There is no merit to Petitioner's contention that the test for identifying arbitrary action set forth in *O'Neill* applies only to the specific *O'Neill* factual setting involving representation in contract bargaining. To the contrary, a primary holding of *O'Neill* was that the then settled law

[8] The Petitioner's proposed test was not set forth in any of Petitioner's briefs or arguments below. The term "Footstool of Integrity" does not appear in any electronically reported court decision.

applying *Vaca v. Sipes* principles to contract administration would be extended to cover the contract negotiation issues involved in *O'Neill*. *Air Line Pilots Ass'n Int'l v. O'Neill*, *supra*, at 499 U.S. 77. *O'Neill* holds specifically that the prohibitions against arbitrary, discriminatory,[9] and bad faith conduct announced in *Vaca v. Sipes* apply to a union in its contract administration, contract enforcement, and negotiating capacities. *Id.*

The Court of Appeals properly concluded[10] that the union's representation of Petitioner did not fall "so far outside a 'wide range of reasonableness' * * * that it [was] wholly 'irrational' or 'arbitrary' ". *Air Line Pilots Ass'n Int'l v. O'Neill*, *supra*, at 499 U.S. 78. Of the specific defects in representation alleged by Petitioner, the claim that union representative Neal failed to tell Petitioner about Cassens' 30-day rule argument when it was first raised in August, 1996 is negated by the fact that Petitioner admits knowing of Cassens' 30-day rule defense in advance of the final grievance hearing in November, 1996. (12a) Cassens provided both Petitioner and Neal with advance copies of arbitration decisions containing the 30-day rule. Petitioner

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[9] Petitioner does not allege that the union represented him in a manner that was discriminatory.

[10] The Court of Appeals determination under Fed. R. Civ. P. 50 properly held that as a matter of law, the evidence viewed most favorably to Petitioner was insufficient to support a verdict in Petitioner's favor. Given this Court's clear explanation of the standards for fair representation, the Court of Appeals properly viewed Petitioner's evidence in its most positive light and determined that any factual complexities in the details of Petitioner's grievance proceeding were not material to evaluating whether the union's representation of petitioner was either arbitrary or in bad faith. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, at 250, 251-2 (1986).

and Neal reviewed them and concluded that these cases were inapplicable or distinguishable from the circumstances involved in Petitioner's case. (12a) There is no reason to assume that Petitioner would have reached a different conclusion if he had reviewed these cases earlier. Petitioner could have sought an adjournment after reviewing the cases but elected rather to proceed with the hearing.[11]

The possibility that a different strategy to seek an adjournment and do further legal research might have allowed the union to find the subsequently discovered Avon Lake decision also does not make the union's actions irrational or grossly unreasonable. Even if the arbitrators had been presented with the Avon Lake decision, it is by no means certain that they would have elected to apply the result of that decision and ignore the 30-day rule established in the other arbitration decisions which Cassens presented.[12]

The Avon Lake decision involves a markedly different fact situation than the one involving Petitioner. The Avon Lake decision involved staffing to serve a new operation rather than a change of carriers at an existing facility. (44a) It involved a "rail ramp" operation that was separable from the operation at the new plant facility. (46a) As

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[11] R.281, Garrison at TR 425-428, Neal at TR 506-508. (All references in this Brief to the record below contain the trial court docket entry number followed by a page reference or exhibit number.)

[12] R.281, 282, Clark at TR 553-567; R.236, trial exhibits AAA, BBB, CCC, DDD, FFF, GGG, and HHH. [References to a 30-day rule in these decisions are set forth in the Appendix to this Brief (1b-3b)]

the decision suggests, where new plants and new operations are involved, delays in starting dates often occur (46a) which make it impractical to insist that employees on leave must report for work by a fixed date. Ample reasons exist for distinguishing the arbitrators' decision in Avon Lake from the circumstances involved in Petitioner's grievance.

The Avon Lake decision does not disavow the 30-day rule; it merely does not mention it. (43a-49a) Six of the decisions presented by Cassens, however, state affirmatively that drivers in a wide range of circumstances are required to make themselves available for work within 30 days of a transfer opportunity or work reorganization in order to preserve their transfer rights or seniority. (1b-3b) These cases were issued both before and after the Avon Lake decision. Given these facts, there is no assurance that arbitrators would have found the Avon Lake case to be the applicable precedent and rejected the precedent cases presented by Cassens.

As the Court of Appeals noted, at the time Petitioner and Neal decided to go forward and seek to distinguish these cases rather than conducting further legal research, they had no knowledge what that research might produce. (23a-25a) If they felt that Cassens' cases were weak, they might justifiably have decided to attack those cases immediately rather than allowing more time for both sides to search for clearer precedent. Union representatives are not lawyers (20a) and even lawyers making such a decision would not be found to have acted irrationally or with

gross negligence. As this Court has noted, union actions[13] in the heat of representing their members are by no means irrational simply because they turn out in retrospect to have produced an unfavorable result. *Air Line Pilots Ass'n Int'l v. O'Neill*, *supra*, at 499 U.S. 79.

Petitioner similarly does not demonstrate any action by the union which falls within this Court's accepted definition of the "bad faith" sufficient to establish a breach of the union's duty of fair representation. As set forth previously, a union's representation of an employee falls into the category of bad faith only where the union engages in "fraud, deceitful action, or dishonest conduct" toward the employee. *Motor Coach Employees v. Lockridge*, *supra*, at 403 U.S. 299. As this standard suggests, an essential element of "bad faith" in the context of unfair representation is misleading conduct or deception which is *intentional* on the part of the union. *Spellacy v. Air Line Pilots Ass'n Int'l*, 156 F.3d 120, 126 (CA 2 1998), *cert. den.*, 526 U.S. 1017 (1999); *Baxter v. United Paperworkers Int'l Union*, 140 F.3d 745, 747 (CA 8 1998); *Mock v. T.G. and Y. Stores Co.*, *supra* at 971 F.2d 531.

Petitioner cites no evidence that Neal defrauded, deceived, or lied to Petitioner. The listing of examples of bad faith contained in the Appendix to the Petition alleges no such conduct. (105a-115a) The items included in this listing consist rather of the same hindsight criticisms of Neal's representation of Petitioner which support

[13] Petitioner's criticism of Neal's lack of vigor or emphasis in his closing arguments in favor of Garrison similarly does not rise to the category of grossly unreasonable or irrational action.

Petitioner's claim of arbitrariness.[14] The evidence moreover shows a complete lack of any basis for assuming that Neal had any reason for taking steps to cause Petitioner's grievance to fail. The evidence shows that prior to the grievance, Neal had never met Garrison (R.158, Garrison at TR 122-123); that Garrison had never opposed Neal or any other officer of Local 327 in any internal elections; that Garrison had never run for Union office himself (R.158, Garrison at TR 45-48); that Garrison had never filed any charges against Local 327 (R.158, Garrison at TR 206) and that no hostility or animosity existed between Garrison and the union (R.158, Neal at TR 54). Given these undisputed facts, there was absolutely no basis for finding that Neal or the union breached the duty of fair representation by bad faith conduct as defined by the decisions of this Court.

[14] The presence of versions of the 30-day rule in six of the arbitration decisions submitted by Cassens (1b-3b) negates the assertions throughout the petition that the 30-day rule was a "fake" which the Union failed to properly challenge.

CONCLUSION

For the reasons set forth, Respondent asks that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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APPENDIX

Excepts from Arbitration Decisions Submitted To Joint Arbitration Committee By Cassens Transport Company

Exhibit AAA (January 9, 1979)

Based on the facts in this case, the claim of C. Smith is denied, however, in the future, any employee who is off sick or injured at the time a bid under seniority transferability is posted will be allowed to bid and hold that bid if the employee will be available within 30 days from the posting of the bid.

Exhibit BBB (April 25-29, 1983)

Motion made, seconded and carried that based upon the facts presented, the claim of the grievant is denied and, therefore, his seniority date of September 24, 1982 is his proper seniority date. The Committee further finds that, in the future, any employee who is off sick or injured at the time additional help becomes available under the additional help provisions of the contract, said employee will be permitted to transfer under additional help provided the employee becomes available within thirty (30) days from the date that additional help became available.

Exhibit CCC (October 21-23, 1991)

Based upon the facts presented, the request of Harold Henry is denied since he was not available to transfer within the requisite thirty (30) day period; and moreover, under any circumstances he is untimely in his request to bid the Smyrna terminal.

Exhibit DDD (June 25, 1993)

Because this transaction involves a partial closing of a terminal, as opposed to a total closing, the Twin Oaks driver and garage personnel presently on medical-related leaves of absence electing to transfer to Annapolis Junction shall have thirty (30) days after the opportunity is presented to make themselves available at Annapolis Junction in order to retain their position under this decision. If they fail to make themselves available within the thirty (30) day period, they shall not have future rights to transfer to Annapolis Junction under this decision.

Exhibit FFF (November 1-3, 1988)

(a) Based on the prior National Committee decision that an employee must be able to assume the bid work within 30 days of the offer of work, to hold their spot and that each of these grievants are still under doctors care, the protest is denied.

(b) Further, the Committee held that these grievants have not lost their Norwood, Ohio terminal seniority.

Exhibit GGG (February 21-22, 1984)

The panel in executive session, motion made, seconded and carried that based upon facts presented which indicated that the vacancy bid was in accordance with the seniority transferability agreement; that James Bolden was not available for work for thirty (30) days subsequent to the effective date of the bid as the result of a heart attack; and, a ruling on a similar case made by the National Committee requiring that an employee must be available and qualified within thirty (30) days of the

seniority transferability bid to be eligible for the vacancy; therefore, the claim of James Bolden for the yard position is denied. Cost split.